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Letter dated 7 March 2007 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council

I have the honour to transmit herewith the sixth report of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004) and extended by resolutions 1617 (2005) and 1735 (2006).

This report was submitted to the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities on 7 November 2006.

The report was discussed by the Committee, and clarifications were made by the Monitoring Team. The recommendations in the report are currently being considered by the Committee.

I should be grateful if the attached report could be brought to the attention of the Council members and issued as a document of the Security Council.

(*Signed*) Johan **Verbeke**
Chairman
Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

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Enclosure

Letter dated 7 November 2006 from the Coordinator of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004) addressed to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

The Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004) and extended by Council resolution 1617 (2005) concerning Al-Qaida and the Taliban and associated individuals and entities has the honour to transmit to you its sixth report, in accordance with annex I to resolution 1617 (2005).

The Monitoring Team would be pleased to answer any comments or questions which you or other members of the Security Council Committee may have in this regard.

(*Signed*) Richard **Barrett**
Coordinator

Sixth report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to Security Council resolutions 1526 (2004) and 1617 (2005) concerning Al-Qaida and the Taliban and associated individuals and entities

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I. Summary

1. The threat from the Taliban, Al-Qaida and their associates continues to preoccupy the international community and to generate a great deal of anxiety about the future. National and international bodies, as well as academics, community leaders and others are increasingly looking at what motivates Al-Qaida-related terrorists to commit indiscriminate murder, while doing whatever they can in a practical sense to prevent this from happening. All appear to agree that there are no easy solutions and that the problem will be with us for some time to come.

2. Given the widespread official and public concern, the amount of resources devoted to the problem and the international nature of the effort to understand and counter the threat, it is a pity that the United Nations sanctions regime against the Taliban and Al-Qaida-related terrorism is not better utilized.

3. The Taliban have become more confident and aggressive, and while Al-Qaida's impact may have declined in Iraq, its influence elsewhere seems to have held steady or increased. Yet few new names have been added to the Consolidated List[1] of individuals, groups and entities subject to the Al-Qaida/Taliban sanctions measures, and States have not reported much action against those who are already on it. The present report looks at the reasons for this and suggests further ways to engage a broader range of States in improving the regime by increasing their appreciation of its potential, their knowledge of how it operates and their confidence in its objectives.

II. Introduction

A. The Taliban

4. The insurgency in Afghanistan has developed from the comparative peace following the overthrow of the Taliban regime in 2001, through a small but growing terrorism campaign in 2003, to the military threat that it poses today. The main reasons for this appear to be the failure of the new Government to ensure security, justice and a predictable livelihood for the population in large areas of the country; tribal disputes; the influence of warlords, drug traffickers and other criminals; widespread corruption and other crime by officials; and the growing ability of the Taliban to regroup, increase their strength and train beyond Afghanistan's borders. The Taliban have been able to take advantage of unemployment, uncertainty and disenchantment to persuade or intimidate large numbers of people into supporting them.

5. In a statement to the press dated 9 October 2006, the Security Council reaffirmed the continuing importance of combating increased terrorist attacks in Afghanistan with all available ways, means and measures as outlined in relevant Security Council resolutions. The increased attacks included, by that date, 101 suicide bombings since the start of the year, with 22 alone in September (there were 17 in all of 2005). Also by that date, the overall number of deaths as a result of the

[1] The Consolidated List, created pursuant to Security Council resolutions 1267 (1999) and 1333 (2000), can be consulted at www.un.org/Docs/sc/committees/1267/1267ListEng.htm.

insurgency had reached 3,750,[2] among which were a disproportionate number of Islamic clerics, Afghan government officials and teachers, many of whose schools were also destroyed.

6. Estimates of the number of Taliban fighters vary, but even at the lower end (4,000-5,000),[3] it is a sizeable number. The Monitoring Team has pointed out in previous reports[4] that the number of Taliban fighters is not necessarily a sign of ideological support, but it is a sign of Taliban resources, and it seems clear that the movement has no current shortage of money,[2] either to hire fighters or to provide them with weapons. How much this owes to the huge increase in opium production (a 59 per cent increase in 2006) is debatable, though the existence of a casual relationship between local Taliban commanders and drug traffickers is well accepted.[5] Also, intelligence officials report that Taliban fund raisers have managed to re-establish links with donors in the Gulf.

7. The vast majority of Taliban fighters are Afghans. There are reports of groups of foreign fighters from North Africa, the Middle East, Pakistan and Central Asia helping them, but they are not part of the leadership, which is overwhelmingly composed of Afghans who had been or are still residing in Pakistan. The impact of the Afghan campaign on potential supporters outside the country comes mainly from the videos, compact discs and Internet postings made by Taliban and Al-Qaida publicists. These continue to increase in their sophistication and link the Afghan campaign with the broader struggle against "Western occupation".

8. Although the revival of the Taliban continues to accelerate, and new leaders have emerged,[6] no new Taliban names have been added to the Consolidated List since February 2001, not even that of Mullah Dadullah, the Taliban's military commander, who was recently documented on tape ordering the beheading of 12 captives. Also, the United Nations Office on Drugs and Crime (UNODC), the Government of Afghanistan and Coalition forces in Afghanistan all observe some association between the Taliban and local drug traffickers. The Monitoring Team believes that drug traffickers, given their wealth and their travel, are more vulnerable to sanctions than most Taliban fighters. If a State sees regular association between a drug trafficker and Taliban commanders, the Team believes it should submit the name for listing. Similarly, the names of local Taliban commanders, who receive money and arms for distribution and may well cross borders, should also be listed, not only to use the sanctions regime as another weapon against them, but also to remind all States that the Security Council and the Committee continue to regard the Taliban as an international threat.

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[2] Special Representative of the Secretary-General for Afghanistan, briefing to the Security Council, 5548th (closed) meeting, 9 October 2006.

[3] Statement by General David Richards, Commander of the International Security Assistance Force in Afghanistan, 14 October 2006.

[4] S/2005/572, paras. 15, 16, 68, 72 and 73; S/2005/83, para. 14.

[5] United Nations Office on Drugs and Crime and Government of Afghanistan, *Afghanistan Opium Survey 2006*, October 2006.

[6] Mullah Omar was reported on 5 October 2006 to have appointed a new 12-man Shura Council; six are listed, two may be, and four are not listed. See Committee website (www.un.org/Docs/sc/committees/1267Template.htm) and www.memri.org/bin/articles.cgi?Page=subjects&Area=jihad&ID=SP131006.

B. Al-Qaida

9. In Iraq, the decline of Al-Qaida's influence and impact noted in the Team's last report (S/2006/750, paras. 14 and 15) continues. Estimates suggest that it is now responsible for 2 per cent to 5 per cent of the violence there.[7] In an audio broadcast on 28 September 2006, the leader of Al-Qaida in Iraq, Abu Hamza al-Muhajir (not listed), said that 4,000 foreign fighters had so far lost their lives (along with many more Iraqis).[8] Whether this number is accurate or not, intelligence services believe that the deaths of Al-Qaida fighters, combined with a general exodus of foreigners and a slackening inward flow, have left fewer than 1,000 foreigners in the country. This is a significant number, but not compared to the many thousands who are involved in the fighting. Al-Qaida is increasingly irrelevant to the growing sectarian violence in Iraq and seems as unlikely as ever to get significant support for its political programme.

10. But if Iraq and Afghanistan do not currently attract many new foreign fighters, they still provide a good recruiting tool for Al-Qaida-related groups elsewhere. For example, the majority of the people arrested in Canada in June 2006 for planning a series of attacks in that country, said that the presence of foreign troops in Afghanistan and Iraq was an important factor in their radicalization. There is now also the question of where the next destination will be for those who would like to fight but no longer see Iraq as an attractive option, and the fear remains that fighters who have left Iraq may organize attacks in other countries.

11. Many observers think that increased conflict in the Horn of Africa is inevitable and that this will provide Al-Qaida supporters with another new cause. The influence of Shaykh Hassan Dahir Aweys (QI.D.42.01 on the Consolidated List)[9] in Somalia has increased considerably, and his political and military skills are likely to attract foreign fighters to his side; there are reports of many being there already. The Sudan too is an area of concern, and Usama Bin Laden (QI.B.8.01) and Aiman al-Zawahiri (QI.A.6.01) have both highlighted it as an important front.[10]

12. Intelligence services in North Africa and elsewhere are also particularly concerned by the threat posed by the Salafist Group for Call and Combat (also known as GSPC) (QE.S.14.01) and its affiliates, not only in North Africa but in Western Europe as well. The announcement made by Zawahiri on 11 September 2006 that this group had joined forces with Al-Qaida was not really news. The two groups have been in touch at various levels since soon after the 2001 attacks in the United States, and in September 2003 leaders of the Salafist Group for Call and Combat publicly declared that they "strongly and fully support Bin Laden's jihad

[7] Assessment on the basis of information publicly released by the Multinational Forces in Iraq, the United Nations Assistance Mission for Iraq (UNAMI) and the Government of Iraq.

[8] Message available at counterterrorismblog.org/2006/09/new_audio_from_leader_of_al_qa.php.

[9] Listed as Aweys Hassan Dahir.

[10] In his 23 April 2006 speech, Bin Laden called on fighters to "prepare to manage a long-term war against thieves and Crusaders in western Sudan". Zawahiri, in his 9 June 2006 message, called upon "every Muslim and everyone who has faith in Sudan and every fervent Muslim in Darfur to confront the Zionist Crusader plot to occupy the lands of Islam".

against the heretic America".[11] The Al-Qaida leadership clearly sees a worthwhile ally in the Salafist Group, reported to have members in Algeria, France, Germany, Iraq, Italy, Spain, Switzerland, and the Chechen Republic of the Russian Federation, and to be linked with extremist groups in Morocco, Libya, Tunisia and Mauritania, and now wishes to exploit these ties still further.

13. This is in line with the continued ambition of the core leadership to play a more direct role in determining strategy while encouraging local groups to do whatever they can as opportunity arises at the tactical level. The main way that the leadership imposes some control and uniformity of purpose is through its broadcasts and Web postings. As the Monitoring Team has noted (S/2006/750, paras. 16 and 17), these have attained increasing sophistication and follow a clear pattern, promoting recruitment, keeping local groups motivated, suggesting targets and providing overall direction.[12] In addition, the indirect exertion of leadership appears to be reinforced by a growing operational influence. Zawahiri and his close associates appear to have increased their operational contacts with others, both locally and outside Iraq.[13] The Monitoring Team expects this trend to continue.

III. The Consolidated List

14. The Committee and the Monitoring Team have consistently encouraged as wide a range of States as possible to submit names for listing. The List can be most useful, and attract most support, when it is recognized as a fair reflection of the threat as perceived by the international community at large. The greater the number of States that submit names, the more representative the List becomes, and the more States are likely to take notice and implement the sanctions with vigour and commitment. It is clear that an inadequate List is likely to result in inadequate or half-hearted implementation of the measures.

15. It is a comment on the List, and on the sanctions regime as a whole, that not more States have come forward with names. The Team believes that there are three main reasons for this. One has to do with the Committee's criteria for listing and de-listing, which are not clear to all States despite the fuller definition of "associated with" in resolution 1617 (2005) and more recent changes to the guidelines of the Committee for the conduct of its work.[14] To help address this, the Monitoring Team recommends that the Committee give more prominence to the cover sheet for listing submissions, which is available to States on the Committee's

[11] www.jamestown.org/publications_details.php?volume_id=411&issue_id=3258&article_id=2369399; the announcement of support to Al-Qaida in September 2003 or late 2003 is also referred to in official documents from the United States Department of State (www.state.gov/documents/organization/45323.pdf) and in a report to the National Assembly of France, No. 2170 of 30 March 2005, available at www.assemblee-nationale.fr/12/pdf/rappports/r2170.pdf.

[12] For example, in his 4 March 2006 statement, Zawahiri stated that the "first front" for Al-Qaida's fight was "to inflict losses to the crusader West in particular in its economic being". He repeated on 10 September that "the focus must be on their economic interests, in particular to stop their stealing the oil of the Muslims".

[13] For example, reports in Pakistan suggest that the people suspected of plotting to bring down transatlantic airlines, arrested in the United Kingdom in August 2006, were in touch with Abu Faraj Al-Libi (not listed) who, until his capture last year, worked closely with Zawahiri.

[14] www.un.org/Docs/sc/committees/1267/1267_guidelines.pdf.

webpage;[15] this useful guide to listing merits circulation as an annex to a Security Council resolution. At the same time, the Monitoring Team continues to recommend that the Committee urge States to submit the names of individuals wherever possible, and if submitting the names of groups or entities, to submit the names of those who direct their operations at the same time.

16. A second reason that States hesitate to submit names for listing has to do with the Committee's procedures, which some States believe are insufficiently in tune with human rights concerns or too inflexible to allow for the speedy addition or removal of names. The Committee has been working hard on this (see section IV.E below) and the Monitoring Team recommends that the Committee give States as much information as possible about its debate until it is able to announce its conclusions. The Team also recommends that the Committee keep in regular touch with any State submitting a listing, de-listing or resolution 1452 (2002) request, until a decision has been reached. The Committee does this to a certain extent, but could formalize the practice so that, particularly when a submission remains unresolved for more than a few weeks, the submitting State receives regular confirmation that it remains under consideration. The Team also recommends that members of the Committee who ask for more time to consider a submission allow the Chairman to relay this information to the submitting State, thus promoting bilateral consultations.

17. The third reason that States have not been submitting names is more fundamental. There is a sense in certain Member States that the List is not a useful operational tool in counter-terrorist work. This lack of confidence in the List is unfortunate as it is in fact potentially one of the most useful operational tools in the whole panoply of international measures against Al-Qaida-related terrorism. It brings individuals, groups and entities to the attention of all States and obliges all States to take action against them. But even States that are currently or have recently been members of the Committee, and so know the potential of the List, do not submit names that would seem both to represent key elements of the threat and also might be vulnerable to the measures. At the very least, States might reckon to find benefit from the United Nations-Interpol special notices of listed individuals that are issued after listing and are circulated internationally to law enforcement agencies.

18. The absence of certain well-known names from the List undermines States' belief that it is a current, relevant, dynamic and well-considered list of the key members of the Taliban, Al-Qaida and associated groups. Equally, the presence on the List of names of people who are widely believed to be dead, or whose identity cannot be established, reinforces doubts about the List's credibility and purpose. The Team again recommends that the Council and the Committee promote the value of listing to States, improve the speed and transparency of the procedures involved, both for listing and de-listing, and be proactive in dealing both with names that should be on the List, and those that should not.

19. To help this task, the Team continues to recommend a regular review of the names on the List. Such a review would not only help remove the names of people who no longer fit the criteria for listing, but would also allow the Committee to remove from the List names which cannot be linked with certainty to any

[15] www.un.org/Docs/sc/committees/CoverSheetEng.doc.

identifiable person.[16] This would give a great boost to the credibility of the List and make implementation of the sanctions much easier for States.

20. There has been much discussion of the presence on the List of the names of people widely believed to be dead. The Committee has looked at this at length, and in April 2006 issued a note verbale to Member States explaining how such names can be removed. In addition to providing sufficient evidence of death, a State requesting the de-listing of a person based on his death should also ascertain and inform the Committee whether or not any legal beneficiary of the deceased's estate, or any joint owner of his assets, is also on the Consolidated List. In cases where there is sufficient proof of death but the Committee decides not to remove a name from the List because, for example, there is no information regarding beneficiaries or assets, the Team recommends that the Committee note on the List that the individual is reported dead. Notations such as "killed," "reportedly killed" or "reportedly deceased" already exist for some names.[17]

21. All States have some sort of counter-terrorist policy, and all States have views on what should be done internationally to deal with the threat. Their support for the Al-Qaida/Taliban sanctions regime depends to some extent on their assessment of its value in relation to their own national or regional counter-terrorist concerns. The Monitoring Team's visits to States, the regional meetings it convenes for the heads and deputy heads of certain intelligence and security services, and the conferences and seminars it attends provide the Committee with a fair idea of the issues and proposals that States believe it useful for the Committee to consider. Many are already on the Committee's agenda, or as a result of the Monitoring Team's reports, are added to it, but the Monitoring Team recommends that the Committee find a way to demonstrate to States, perhaps through listing or commenting on issues under consideration on its website, that it understands and has taken into account the concerns of States. The Team believes that this would promote engagement by States and encourage a more thorough implementation of the measures.

IV. Implementation of the Sanctions

A. Effectiveness of sanctions implementation

22. Authoritative studies and anecdotal evidence suggest continuing deficiencies in certain aspects of Member States' implementation of the Al-Qaida/Taliban sanctions regime. For example, a progress report of the International Monetary Fund (IMF) and the World Bank reviewed a sample of IMF and World Bank assessments of 18 countries between March 2004 and August 2005. It found that none of the 18 countries was fully compliant and only two were largely compliant with Financial Action Task Force (FATF) Special Recommendation III, which, inter alia, requires countries to implement measures to freeze without delay funds and other assets of terrorists or their financiers in accordance with Security Council resolutions 1267

[16] That is, having at a minimum a full name, date and place of birth and nationality.

[17] See entries for Mohammad Rabbani (TI.R.1.01), Zelimkhan Ahmedovich Yandarbiev (QI.Y.106.03) and Fathur Rohman Al-Ghozhi (QI.A.110.03).

(1999) and 1373 (2001).[18] These are lower numbers than the Monitoring Team would have predicted, and may be an indication of the difficulties in implementing Special Recommendation III, above and beyond what is required to implement resolution 1267 (1999) and its successor resolutions. The review was also based on a limited sample of assessments, and a number of countries in the sample were assessed not long after the adoption of the FATF Special Recommendations. Nevertheless, it is a cause for concern, and the Team will continue to follow this issue.

23. In the Monitoring Team's view, the effectiveness of a State's implementation of the sanctions should be judged on two levels: first, whether the State has the legal, administrative, enforcement and political measures in place to implement the sanctions; and second, how the State implements the sanctions in practice when confronted with a listed individual or entity, or the assets of a listed party, within its jurisdiction. The reporting required by resolution 1455 (2003) was intended to gather data on both levels, but the information from those reports is incomplete and dated. For this reason, the Team suggested the use of a checklist, which the Council created in resolution 1617 (2005), but additional measures may be necessary, without creating an undue reporting burden on States, to ensure that the Council and Committee have the necessary information to determine the effectiveness of, and extent of compliance with, the sanctions regime.

B. The checklist

24. The checklist was designed to minimize the time and resources needed by States to supply the Committee with essential information. But the number of checklists returned is less than the number of the far more elaborate and demanding resolution 1455 (2003) reports returned over a comparable period.[19] What the checklist has shown is that whether through lack of capacity, lack of interest or lack of will, States are no longer as ready to devote time and energy to preparing written reports to the Council's counter-terrorism committees as they were in the period immediately following the attacks in September 2001, when all Member States submitted a report to the Counter-Terrorism Committee.

25. The value of the checklist has been less than was hoped. This is partly because it requested information only on those names most recently added to the List, which is the group about which the Committee already has the best and most recent data; partly because the Committee did not ask for or obtain any updated data via the checklist on the 95 per cent of listed individuals and entities added to the List in earlier periods, about which there is the least information; and partly because only

[18] Supplementary information to "Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward", staff report prepared by IMF Monetary and Financial Systems and Legal Departments and the World Bank, Financial Sector Vice-Presidency, 31 August 2005, available at www.imf.org/external/np/pp/eng/2005/083105.htm. The report was discussed in Jean-Francis Thony and Cheong-Ann Png, "FATF Special Recommendations and UN Resolutions on the Financing of Terrorism: A Review of the Status of Implementation and Legal Challenges faced by Countries" (draft), to be published in *Journal of Financial Crime*.

[19] By the end of October 2006, only 55 out of 192 States had submitted a checklist. Over a similar period (eight months after the deadline), 84 States submitted their resolution 1455 (2003) reports.

55 States completed the checklist. The Council is now faced with the issue of whether and how to demand checklists from the numerous non-reporting States.

26. To alleviate these problems, the Monitoring Team continues to recommend that the Council and Committee encourage States to complete and submit their checklists, if they have not already done so, but recommends that both for this and future checklists, which might be requested on an annual basis, the Council make explicit that it is up to States whether or not to complete them. If a State has something to report, it should do so; if it does not, it can ignore the checklist without fearing that the Committee will question its commitment to the sanctions regime.

27. The Monitoring Team also recommends that any future checklist invite States to comment if they have anything to report concerning any listed parties, such as their location, the status of their assets, their release from prison, their receipt of a new travel document or their extradition or expulsion to another country. The Committee should make clear that the request for information refers to all listed parties, whenever placed on the List, not just to new names. This will provide States with an easy way to update the List and inform the Committee of new developments.

28. States need not report via a checklist. They should provide the Committee with any new information as soon as they are confident of its accuracy. This occasional, ad hoc reporting should not be a burden on States. The Monitoring Team recommends that the Committee explain to States that communications need not be formal. So long as they are clearly official, they may go in any suitable form to the Committee, its Secretary or the Team. To supplement this exchange, the Team will continue to communicate directly with States that have a particular connection with entries on the List, asking specific questions and promoting a dialogue rather than merely requesting information which a State may hesitate to provide because it does not know the purpose behind the question. In this the Team will, of course, continue to consult with the Counter-Terrorism Committee Executive Directorate and the experts who support the Committee established pursuant to Security Council resolution 1540 (2004).

C. Update on the status of listed individuals[20]

29. In tracking the many official and other reports concerning listed individuals and entities over the last two years, the Team has noticed certain patterns and trends. Inevitably, a great many of these reports remain uncorroborated, and the shortage of reliable and comprehensive information with regard to listed parties, owing in part to the lack of an efficient reporting mechanism for States, makes any analysis preliminary. Nonetheless, the statistics available, even though not exact, present a useful picture.

1. The Taliban

30. Of the 142 individuals currently listed in the Taliban section of the Consolidated List, six have been reported deceased and at least 19 have been

[20] For this survey, the Team has relied on information provided by Member States, and on official or open-source information that has been assessed as generally reliable or better.

officially recognized as reconciled by the Afghan authorities, although so far without sufficient evidence to convince the Committee to remove their names from the List. The number of individuals arrested and/or detained is difficult to ascertain, given the lack of reliable information. The list of persons detained at Guantánamo Bay between January 2002 and 15 May 2006, as released by the United States Department of Defense, shows that several listed Taliban may have been or could still be there.[21] The arrests of Taliban members in Afghanistan have been numerous in recent months, and the increased fighting between Taliban insurgents and North Atlantic Treaty Organization (NATO) troops, Coalition forces and the Afghan Army has left many Taliban killed, but the Monitoring Team has no reliable information on which listed individuals may be concerned (see S/2006/154, para. 35).

31. These developments on the ground, the lack of identifiers for a substantial number of the listed Taliban, and the fact that no new Taliban have been added to the Consolidated List since February 2001 underline the need for a serious review of this section of the List to maintain its quality and relevance and to make the sanctions more effective. The Monitoring Team recommends that the Committee devote specific effort to this task, coordinating with the Afghan authorities and concerned Member States, as appropriate, and utilizing the resources of the United Nations Assistance Mission in Afghanistan (UNAMA) and the Monitoring Team.

2. Al-Qaida

32. To the best of the Team's knowledge, of the 217 individuals associated with Al-Qaida who were on the List at the end of October 2006, at least 79 (over a third) are currently detained, and at least 12 are reportedly dead, which leaves around 126 (well over half) presumed alive and not in custody.

33. So far, about two thirds of the individuals on the Al-Qaida list have been charged with a criminal offence; about 40 per cent have been convicted and sentenced; the cases against about 20 per cent remain pending; and less than five per cent have been acquitted. More than half of the total were facing charges or had been convicted (even if in absentia) before they were put on the List. About half have been arrested at some point, two thirds of whom were arrested before their listing. No more than 25 per cent of the individuals on the Al-Qaida list can be presumed to be alive, not in custody and never arrested, charged or convicted of a criminal offence.

34. The ratios for the individuals listed from January to November 2006 do not differ much from past averages, although the proportion of those detained appears to be slightly higher (just under half) and of those with legal convictions or formal charges slightly lower (just over half). The geographic spread of the activities of listed individuals, in particular of those who have been convicted or are facing formal criminal charges, includes Africa, Central and South-East Asia, the Middle East, North America, the South Pacific and Western Europe (see S/2006/154, para. 33).

[21] See "List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006", United States Department of Defense, www.defenselink.mil/news/May2006/d20060515%20List.pdf. Several names on the list released by the United States resemble names on the Consolidated List, but cannot be verified as the same without additional information.

D. Legal cases

35. Litigation involving listed individuals and entities continues to grow around the world, with four new cases filed before the European Court of First Instance in May 2006. A court in Turkey recently issued among the first judgements against the sanctions regime, ordering that the assets of a listed individual be unfrozen, although the decision is now on appeal. For more details of these cases, see annex I to the present report.

36. While this type of litigation is not new, the number of cases has escalated over recent years. It has occurred since the beginning of this sanctions regime and with similar Security Council sanctions programmes. A more recent phenomenon has been that courts have begun to take account of a listing in reaching their decisions in criminal cases involving terrorism, as explained in box 1 below.

Box 1

Relevance of a United Nations listing to criminal proceedings

In October 2005, in considering the country's first criminal case involving its relatively recent laws on terrorism and terrorist financing, a Swedish Court of Appeal sentenced Iraqi nationals Ali Kamal Berzengi and Ferman Jabbar Abdulla (both not listed) to prison (for five years and four and a half years respectively) for various offences including preparation to commit terrorist offences, preparation to commit devastation endangering the public, and financing terrorism. The court determined that the two men had collected $115,000 and transferred $33,000 — directly and via intermediaries, using the telephone and the Internet to provide instructions — to persons in Iraq connected to Ansar al-Islam, an organization on the Consolidated List (QE.A.98.03). The money was to be used as payment for terrorist offences or for paying expenses related to such crimes.

The convictions in the case depended on the prosecution proving that the money sent to individuals connected with Ansar al-Islam was intended to be used for terrorism. In determining that Ansar al-Islam constituted a terrorist organization, the lower court specifically noted as relevant the fact that Ansar al-Islam appeared on the Consolidated List, as well as on the list of sanctioned individuals and entities of the European Union. The court also pointed out that Ansar al-Islam had officially taken responsibility for terrorist attacks. Based on these same grounds, the appeals court upheld the lower court's decision that Ansar al-Islam was a terrorist organization.

The Italian Supreme Court reached similar conclusions in two cases decided last year. In February 2005, the court admonished a lower court for not considering the presence of an accused on the Consolidated List. In June 2005, the Supreme Court went further and expressly recognized the probationary value of the document attesting to the presence of a person or group on the List: "Documents prepared by international organizations, even if not considered as full and complete evidence of the

terrorist nature of the group, can be used by the judge for the purpose of determining the existence of serious indications of guilt. These documents can be used as the basis for an investigation because they are evidence of the fact that an international organization has adopted repressive measures against such terrorists."

The courts of other countries appear to be considering, or poised to consider, similar uses of the Consolidated List as establishing, or at least helping to establish, that an individual or entity is involved in terrorism for purposes of their national criminal laws.

Source: Swedish and Italian authorities.

E. Listing and de-listing issues

37. In the three months since the Monitoring Team's last report, there has been continued activity with respect to listing and de-listing issues, both within and outside the Committee. The Team believes that the lengthy and considered efforts of the many interested States, international and regional organizations and others will culminate over the next few months in the adoption by the Council and the Committee of certain enhanced procedures for listing and de-listing.

38. A recent development from outside the Committee was the release in August 2006 of the report of Martin Scheinin, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. He commented in detail on the practice of placing individuals and entities on terrorist lists, including the procedure of the Al-Qaida and Taliban Sanctions Committee (see A/61/267, paras. 30-41). He acknowledged that "the need for preventive action is an important aspect of the fight against terrorism", but emphasized that certain basic human rights must be respected: (a) precise definitions should be used for placement on lists; (b) reviews after reasonable periods, such as 6 or 12 months, are necessary to ensure that sanctions remain temporary and preventive, rather than permanent and akin to criminal punishment; and (c) certain procedural guarantees should be utilized for those placed on lists, including proper notice, the right to judicial review (whether at the national or international level), the right to a remedy if wrongly listed, and the right to humanitarian exemptions, where appropriate.

39. Other significant developments have primarily occurred within the Committee itself. Over the past few months, the Committee has reached preliminary agreement on comprehensive changes to its guidelines on listing procedures, with the exception of a proposal for a regular review of listings. One member of the Committee proposed an automatic review mechanism for listings, similar to that suggested by the Monitoring Team in its fourth report, but refined to require reviews of listings every two years, instead of the five-year period suggested by the Team (S/2006/154, paras. 49 and 50). The Committee failed to reach consensus on this proposal, and the Chairman introduced a modified version of the plan, which also has not gained consensus.

40. With respect to de-listing, the Team described in its fifth report the various outstanding recommendations in this area, including proposals put forward by France and the United States of America (S/2006/750, paras. 49-51). These two countries have worked together to combine elements of their proposals and now suggest that the Council request the Secretary-General to establish within the Secretariat a focal point to receive de-listing requests, thereby giving a listed party the option of submitting such a request either through his State of residence or citizenship (as provided for in section 8 (a) of the current Committee guidelines[14]) or via the focal point. Under the current proposal, if the focal point were utilized, it would perform the following tasks, in the following order:

(a) The focal point would forward the de-listing request for information and comment (approve, disapprove, no comment, other) to the designating Government(s) and to the Government(s) of citizenship and residence. Because the latter Government(s) is/are encouraged to consult with the designating Government(s) before recommending de-listing, it/they could approach the focal point to be put in contact with the designating Government(s), if the designating Government(s) agreed;

(b) If, after such consultation, any of the Governments recommended de-listing, the focal point would forward the recommendation and accompanying explanation to the Chairman of the Committee, who would place the petition on the Committee's agenda;

(c) If, after a reasonable period (three months), none of these Governments recommended de-listing or requested an additional period to work on the petition, the focal point would forward the de-listing petition to all members of the Security Council for review. At that point, any member of the Security Council, after consultation with the designating Government(s), could recommend de-listing by forwarding the petition to the Chairman of the Committee, accompanied by an explanation;

(d) The focal point would inform the petitioner of the Committee's decision whether or not to de-list.

41. As the work progresses on listing and de-listing matters, the Monitoring Team continues to commend its own recommendations in this area and to note the substantial previous work done by other States, organizations and individuals.[22] In addition, the Team reminds the Committee of the various proposals for modifications to the listing and de-listing procedures that perhaps could not be included in the Committee's guidelines without prior modifications to the underlying resolution. These proposals include, for example, to supplement the provision requesting notice of listing, as contained in paragraph 5 of resolution 1617 (2005), by asking Member States to supply the publicly releasable portion of the statement of case as part of their notice to listed parties.

F. Committee practice regarding listing and de-listing submissions

42. Many States concerned about the fairness of the sanctions regime may not understand fully how the Committee operates. For the sake of transparency, and to

[22] See S/2006/750, paras. 38-43 and 49-51; and S/2006/154, paras. 48-50 and 60.

reduce such concerns, the Monitoring Team believes it useful to explain how the Committee's guidelines on listing and de-listing are implemented in practice.

43. The Committee considers all listing proposals in the same manner, whether they come from a member of the Committee or any other State. Once a submission is received, it is circulated to all 15 Committee members, who then have five working days to raise an objection (see guidelines,[14] sect. 4 (b)). If no one objects, the listing is approved, but a Committee member may also ask for more time to consider the submission, in which case a decision is suspended until that member is ready to proceed. These "holds" usually occur when a member believes that more information is required to justify the listing, or when it requires more time to evaluate the submission. A member may ask the Chairman to approach the submitting State to seek additional material, or it may do so itself on a bilateral basis. As the decision to list is made by consensus, the rejection of a submission, as opposed to a "hold", by any one Council member is enough to turn it down.

44. In practice the Committee does not nowadays usually reach a decision on submissions within the five-day no-objection period. In the early years the average time for a successful listing submission to be approved was a few days, but since the beginning of 2005, excluding submissions still on hold, the average time taken is some weeks from the date of circulation of the submission.[23] This does not include any time spent in prior consultations between the submitting State and individual members of the Committee, which often occurs.

45. Submissions for de-listing are handled in substantially the same manner, though submitting States are instructed by section 8 of the Committee guidelines to consult in advance with the original designating State and to try to reach a consensus on the proposal. In practice, this means that some weeks or months may pass before a submission for de-listing is submitted to the Committee.

46. Listing proposals are treated no differently if they originate with one or more of the five permanent members of the Council. In fact, as the list of "holds" grows steadily longer, it includes several submissions by permanent members. Similarly, members of the Committee placing "holds" on listing proposals include both permanent and non-permanent Council members, as demonstrated by the example in box 2 below.

[23] Providing a precise average time for listing considerations is inherently misleading, because the periods necessary depend upon the amount and quality of information provided at the time of submission, and whether additional data are given subsequently. For individuals, the average time for listing was 12 days in 2006 and 65 days in 2005, leading to an average of 46 days. For entities, the average listing time was 18 days in 2006 and nine days in 2005 (the 2005 figure excludes one entity which was listed after an exceedingly lengthy period). The global average for the two years, excluding the one entity noted above, is 41 days. Yet, to be clear, most listings actually occurred within three weeks; the extended periods required for a smaller number of proposals make the average higher than generally occurs.

Box 2

Denmark's procedures for considering listing submissions

During a recent visit to Copenhagen, the Monitoring Team discussed with Danish authorities their procedures, as a member of the Security Council, in considering listing proposals.

When a submission for listing is received by the Committee, the Permanent Mission of Denmark in New York transmits it to Copenhagen for consideration by the Ministry of Foreign Affairs and other relevant authorities. The relevant authorities will assess the proposal for listing on the basis of the definition of "associated with" Al-Qaida or the Taliban, as contained in resolution 1617 (2005). They will assess the material provided as part of the submission, as well as other information regarding the individual or entity at issue that may come from the files of national authorities or foreign partners.

The Danish Defence Intelligence Service, as the agency charged with oversight of foreign intelligence matters, and the Danish Security Intelligence Service, as the service charged with oversight of internal security and intelligence matters, will review the available information and determine whether the allegation of "associated with" Al-Qaida or the Taliban, as contained in the proposal for listing, is sufficiently documented. The intelligence services generally require two reliable sources of information. The services then make a recommendation regarding the sufficiency of the proposal to the Ministry of Foreign Affairs, which will gather all information received in order to make a final national assessment.

If Danish authorities are not satisfied with the information in support of a listing, they may seek additional information on a bilateral basis from the proposing State, or they may put a "hold" on the listing, to allow the Committee to attempt to obtain additional supporting material.

During its time on the Council, Denmark has placed numerous "holds" on listing submissions, many for lengthy periods, others for a shorter time, to ensure compliance with the listing standards of resolution 1617 (2005). Some of these "holds" remain outstanding and, if they are in place when Denmark's tenure on the Council ends on 31 December 2006, the new members of the Council will have an opportunity to place any or all of the same "holds", pursuant to Committee practice.

Source: Danish authorities.

G. Humanitarian exceptions

47. Between August and October 2006, the Committee received seven notifications pursuant to resolution 1452 (2002) and approved them all. Most requests came from two States. The Committee also received a notification concerning the assets of a non-listed individual which had been placed in a trust

fund controlled by a listed entity. The Committee decided that the State could deal with this issue as it saw fit in accordance with applicable national measures.

48. Although there has been an increase over time in petitions pursuant to resolution 1452 (2002), problems persist. First, some States bluntly concede that they have unfrozen money and/or permitted certain financial transactions for the benefit of listed parties without submitting petitions to the Committee, in part out of a fear their requests would be denied or delayed, an action that they believed might require them to choose between ignoring the Committee and possibly infringing their national and international human rights obligations. Second, as the Monitoring Team noted in a previous report (S/2006/750, paras. 57 and 58), the Committee itself appears to have found the wording of resolution 1452 (2002) unworkable in certain situations; these arise when the Committee decides it needs more than 48 hours to make a decision on a notification, while the resolution specifies that such notifications will be permitted in the absence of a negative decision by the Committee within that time frame. Finally, some States where a number of listed parties or their bank accounts are located complain that the resolution gives them no flexibility when it comes to routine actions regarding minor transactions, such as, for example, combining a number of related accounts with small amounts to avoid bank fees draining each of the accounts, or unfreezing nominal amounts to pay for certain miscellaneous expenses deemed necessary by various national authorities.

49. Accordingly, the Monitoring Team suggests that the Council may wish to re-examine resolution 1452 (2002) in the light of the experiences of the Committee and Member States. In cases in which the Committee might not wish to approve a particular request for basic expenses within 48 hours, either because the petition lacks the necessary detail or seeks items that do not appear "basic", the State should still be permitted to authorize and unfreeze immediately a nominal amount of money or goods for the fundamental necessities of life (perhaps in line with the level of national social benefit payments or another relative measure). Such a process would not only help to ensure basic human rights, but could also enhance implementation by, for example, reducing criticism of the sanctions programme and the threat of adverse court judgements. The Council could also make it explicit that States have a degree of flexibility when administering nominal amounts of frozen assets to reduce their administrative burden; this could be achieved by allowing a State to report periodically (perhaps annually) on the nominal amounts of frozen assets it had transferred between accounts or utilized for specific expenses, rather than prior to every transaction.

V. Assets freeze

A. Amount of assets frozen

50. In its last report (S/2006/750, para. 59), the Monitoring Team noted that, according to information provided by Member States, as of late July 2006, $91.4 million had been frozen by 35 Member States under the Al-Qaida/Taliban sanctions regime, though five States did not disclose the amount they had frozen. There have been no reports of newly frozen assets since then, though during this period five individuals and one entity have been added to the Consolidated List. Nor

has there been any report of assets being unfrozen, except where applications have been made to the Committee under resolution 1452 (2002) to release funds for basic expenses (see also para. 47 above). These amounts have been small.

51. The lack of information suggests that the overall total of reported frozen assets is now inaccurate. It seems probable that States have located and frozen assets, whether recently or in the past, in excess of the recorded amounts, but do not believe they are under any obligation to report these actions to the Committee. Similarly, States may have determined that assets they have frozen do not in fact belong to listed parties and have released them. In order to improve the Committee's ability to assess the impact and effectiveness of the sanctions regime, the Team continues to recommend that the Security Council request States to report any freezing or unfreezing actions taken under the sanctions regime, stating the amounts and types of assets frozen or unfrozen (see S/2006/750, para. 60; see also para. 27 above).

B. Assets freeze results and the underlying factors

52. Whatever the true figure of frozen assets, there is continued concern among States that the amount is small relative to the large number of listed parties and the frequency of attacks. States also note that the great majority of frozen assets were located at the start of the sanctions regime, with little being added in subsequent years.

53. The Monitoring Team believes that the assets freeze serves several purposes. First, it acts as a deterrent, especially to those who wish to finance Al-Qaida-related terrorism or the Taliban. Major financiers are likely to be more visible than the terrorists they support, with businesses and assets that are easily located by the authorities. The fear of listing may at the very least reduce the flow of money and other support to listed individuals and groups, and make it more difficult to effect the transfers. In addition, the need for listed parties to conceal their assets and the fact that they have no easy access to the official banking system should make cross-border funding of terrorist operations more difficult. There is no doubt that terrorist operations can be launched at low cost, but it is reasonable to assume that if more money were available, attacks might be larger and more sophisticated.

54. The Monitoring Team also believes that the assets freeze restricts the ability of Al-Qaida-related terrorists to run extensive networks, training camps and social programmes for the families of supporters, especially across borders. To do so remains an objective of the core leadership, but for the moment networks under their direct control appear limited to the Afghanistan-Pakistan border area.

55. The Monitoring Team recommends that the Committee re-examine the assets freeze, bearing in mind that it targets financiers far more effectively than it does the great majority of currently listed individuals, who are unlikely to have sizeable assets and will hold them generally in only one jurisdiction and outside the formal banking sector. The Team believes that the effort required of States and the financial institutions they supervise to implement the assets freeze may now be disproportionate to the amount of assets located and frozen. While recognizing that the quantity of assets frozen is not the sole determinant of the value of the assets freeze, the Team believes that a more aggressive and focused listing of financiers and other supporters of the Taliban, Al-Qaida and their associates (such as drug

traffickers in Afghanistan), as well as those terrorists who collect, move and disburse money, would help make the regime more obviously effective.

C. Searching the Consolidated List

56. Based on available information, the Monitoring Team believes that the vast majority of States continue to implement the sanctions regime in their financial sectors. However, a major concern is that in most States the Consolidated List is searched manually, at least by some sectors of the government or private industry, which affects both the speed and the efficiency of implementation.

57. The Team notes that inevitably this problem is more acute in developing countries. Banks in developed countries can use information technology to compare customer databases and potential customers, as well as transacting parties, against the names on the List. To improve efficiency some convert the List into an electronically readable format so that checks are quick and automatic. Many other financial institutions would find great advantage in doing the same, if they could afford the cost. The Team notes that authorities in some States[24] are already providing additional electronically readable formats of the Consolidated List, which are accessed by their private sector institutions and sometimes by private sector bodies in other countries.

58. Although this is a welcome development, the Monitoring Team is concerned that as the Committee does not provide the List in these convenient electronic formats, banks or national authorities must find ways to make their own copies of the List from the version that appears on the website. This may lead to errors such as misspellings or omissions, and may delay updating. To avoid these problems, the Team recommends that the Committee itself provide the List in formats that can be downloaded and more easily transferred electronically, such as Excel (xls) and plain text (txt).

59. But even so, the need would still remain to increase the searchability of the List for small financial institutions, which need the same ability to search as that available to large banks but cannot afford their own tailored solutions or the necessary software to make automatic searches. In the absence of such means, small financial institutions (and indeed anyone required to compare customer databases against listed names) must continue to conduct the process manually. The Monitoring Team believes that if the List on the Committee's website were supported by a reasonable search engine, these financial institutions would be able to make their searches directly off the website, without having to purchase and maintain this capability as part of their database systems, and would always be accessing the most current version of the List.

60. The Monitoring Team has discussed this issue with commercial software design companies but notes a problem in that such systems rely on users having

[24] For example the websites of the Bank of England (United Kingdom) and the Office of the Superintendent of Financial Institutions (Canada) have the Consolidated List incorporated into national watch lists in multiple formats, including Excel, HTML, Adobe Acrobat, comma delimited and plain text. See www.bankofengland.co.uk/publications/financialsanctions/index.htm and www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=525.

passwords. Obviously the use of a password is neither practical nor desirable for the Consolidated List, and the Team intends to look further at the problem, assess the viability and cost of any solution and come forward with further recommendations.

D. Value of a designated national authority to oversee enforcement of sanctions

61. Few States have made any determined effort to deal with the assets of listed parties held outside the banking system. The Monitoring Team believes that the interpretation of "assets" is almost as varied as the number of authorities charged with the task of implementing the financial sanctions, and notes that in most States this is a central bank or another supervisory body which only has authority in the financial sector.

62. The Team believes that for all listings, a number of national authorities beyond the central bank or financial regulators become relevant, for example authorities responsible for the registration of real estate ownership, motor vehicles, businesses and other dealers in value. While it may not be practical to ask all national authorities who might be able to locate assets to search their databases against the List on a regular basis, the Team believes that States should be more aware of the possibility of assets existing and being transferred outside the banking sector.

63. The Team notes that some States have designated one body to coordinate and oversee the comprehensive implementation of financial sanctions nationally by a wide range of separate authorities and industry/trade associations.[25] The Team endorses this action as it believes that the common practice of relying on central banks or on financial regulators who are accustomed to operate in a narrower sphere can result in partial and fragmented implementation, especially when listed parties continue to run businesses.

64. Therefore, the Team recommends that the Committee encourage States to designate a single authority to take charge of national freezing actions and to ensure that they have the necessary mandate and authority to do so.

E. Interpretation of the assets freeze

65. There are many different approaches to the problem of listed individuals who may control or own assets outside the banking system. Some States interpret their obligation widely by, for example, extending the duty to report assets affected by the sanctions beyond financial institutions to the general public, making it illegal to enter into any transaction with respect to the properties of listed parties, except with a licence.[26] These provisions are universally binding, and in order to sensitize the public, the State makes announcements through government journals and the press. The Monitoring Team sees this as an effective way of preventing unauthorized dealing in targeted assets, especially those that are not immediately visible, and

[25] The National Agency for Enterprise and Construction in Denmark has the overall responsibility for coordinating assets freezing measures nationally. The Danish Financial Supervisory Authority is responsible for ensuring that the financial sector observes the rules and acts accordingly. Other Danish authorities also take part in ensuring sanctions implementation.

[26] For example, Canada; see http://laws.justice.gc.ca/en/U-2/sor-2001-360/247060.html.

recommends that these practices be adopted by others, especially to control assets that listed parties require for personal use, or to operate or conduct a trade.

Box 3
Canadian assets disclosure requirements

8. (1) Every person in Canada and every Canadian outside Canada shall disclose forthwith to the Commissioner of the Royal Canadian Mounted Police and to the Director of the Canadian Security Intelligence Service

(a) the existence of property in their possession or control that they have reason to believe is owned or controlled by or on behalf of a listed person; and

(b) information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

Source: Canadian Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (SOR/2001-360), at http://laws.justice.gc.ca/en/U-2/sor-2001-360/247060.html.

66. The Monitoring Team has documented for the Committee risks inherent in some implementation methodologies applied by States, in particular with regard to definitions of economic resources which may put targeted assets out of the reach of the sanctions. Some of these concerns have been echoed by other groups of experts, and in regional best practice papers.[27] The Team believes that a body of best practices to guide Member States' implementation of the financial measures would both increase the chance of locating assets and ensure that no assets were excluded. Therefore, the Team has identified areas directly related to the sanctions regime where best practices could be developed or improved at an international level (see box 4 below), and intends to work on them with the Counter-Terrorism Committee Executive Directorate and relevant international organizations, as well as the private sector.

Box 4
Areas for which best practices could be developed at an international level

The development of best practices could include a standardized, wider and consistent definition of targeted assets for the purposes of financial sanctions; a standardized definition of "control" by a listed party; approved methodologies for the application of financial sanctions to an operating entity; general indicators of terrorist financing activity in

[27] See, for example, *EU Best Practices for the effective implementation of restrictive measures* (10533/06), 14 June 2006, available at register.consilium.europa.eu/pdf/en/06/st10/st10533.en06.pdf.

banking transactions; standards for the investigation of financial footprints of listed parties (consistent with national record-keeping requirements) and for the exchange of relevant financial information; methods to avoid warning parties of their possible listing by the piecemeal addition of connected entities or through national listings; examples of not-listed Al-Qaida-related parties subjected to national sanctions by States; increasing awareness of the sanctions regime among the public; and designating national authorities to oversee implementation.

F. Guidance on detecting terrorist funds and financing

67. There is little information available on how terrorists hold or acquire funds. The Monitoring Team believes that if States that have frozen assets were to investigate the past transactions of listed parties for behavioural patterns and share the information with international financial institutions charged with developing standards for countering the financing of terrorism, useful guidance would emerge. Also, many States have knowledge of terrorist financing activity from past or current investigations that, although unrelated to listed parties, will likely reflect wider patterns of financing. The Team acknowledges that States will not want to jeopardize investigations, or disclose strengths or weaknesses in their counter-terrorism programmes, but such information is of obvious value to people who have to prepare suspicious transaction reports.

68. The Team recommends that the Council encourage States to share information on Al-Qaida-related terrorist financing patterns more widely so as to promote more effective methodologies and best practice recommendations in relation to countering the financing of terrorism.

Box 5
Perspective on international financial controls

Almost all States have a financial intelligence unit or equivalent body charged with collecting, analysing and disseminating suspicious transaction reports. The volume of suspicious transaction reports has increased tremendously, though the procedure suffers from a lack of guidance as to what to look for; and in many States there is limited capacity to examine these reports, most of which are generated by banks. Only a small proportion of the reports are related to terrorist financing and hardly any have been associated with Al-Qaida. Statistics on cross-border currency movements, including on seizures, are virtually non-existent, and in many cases currency declarations or disclosures are either not required or not enforced.

VI. Travel ban

A. Introduction

69. The Monitoring Team continues to believe that the efficient and effective implementation of the travel ban, taken together with the other two sanctions measures, represents a powerful tool in combating global terrorism. Terrorists need to travel, whether to enhance communication, establish or reinforce direct contact with cell members or take part in the planning or execution of terrorist acts. Based on contact with States, the Team believes that Al-Qaida members and their associates, including listed individuals, continue to travel using fraudulent travel documents, or because of gaps in Member States' implementation. The Team has noted that these gaps often result from a lack of knowledge of the sanctions regime or poor coordination at the national or international level.

70. Of the 147 reports submitted pursuant to resolution 1455 (2003) and the 55 checklists submitted pursuant to resolution 1617 (2005), some 94 per cent claim that the necessary national legal machinery is in place to implement the travel ban, whether by adapting or using existing legislation, or through new laws.[28] However, the Team has also noted some persistent obstacles to effective international implementation. These include insufficient or outdated information on some individuals on the List; inaccurate information on their travel documents; the wide availability of false identities and documents; and the lack of effective international and national mechanisms to update relevant databases quickly. An example of a listed individual's ability to travel is outlined in box 6 below.

Box 6
International travel while listed

During the Monitoring Team's trip to Stockholm in October 2006, Swedish officials arranged an interview with Ahmed Ali Yusuf, a citizen of Sweden de-listed in August 2006, to discuss, among other things, his experiences while listed, including the widely publicized reports of his frequent international travel. Mr. Yusuf openly described his regular travel throughout Europe, by aeroplane and automobile, as well as at least one trip to the Middle East and repeated travel to two countries in Africa — all while his name appeared on the Al-Qaida/Taliban sanctions lists of the United Nations and of the European Union. He showed the Team his Swedish passport, which documented his trips to and from Africa (he said that some of his travel had occurred prior to his receipt of a new Swedish passport in June 2004). He said that he was never stopped by any customs or border control agents due to his listing.

Because listed persons are subject to an international travel ban, the Team attempted to learn how he apparently had managed to travel so easily; several reasons appear possible. One reason that Swedish officials

[28] Information based on Member States' reports submitted between the beginning of 2003 and the middle of 2006, and official information communicated to the Team during country visits.

noted is that the Schengen area of Europe is an area of free movement of persons, with controls at the external borders but not at internal borders. Another could be that he was on the Consolidated List under the surname "Yusaf" instead of his actual name, "Yusuf," which is the name on the passport he used to travel. Another reason may be that the new Swedish passport he received in 2004 contained a different passport number than the document number for him on the List. Swedish authorities noted that his name would not have appeared within the Schengen Information System to alert European authorities of his illicit travel, even when he travelled via international airports, because the system only includes the names of citizens of third countries and not citizens of Schengen member States.

Listed individuals and entities also are subject to an assets freeze, and the Team inquired as to how Mr. Yusuf had managed to pay for his trips. He responded that all his travel bills had been paid up front by the Solidarity Committee, an organization created in Sweden to support him and two other Swedish residents during their time on the List and their (successful) efforts to obtain de-listing. The Team learned that prosecutors had assessed whether to file criminal charges related to the public fund-raising activities of this group, and the individuals who contributed to it, but ultimately declined to do so, partially because there was a relatively large number of small donations made, rendering prosecution difficult. Mr. Yusuf told the Team that he had not informed the Swedish Government or his own lawyer of his travels, and the Government of Sweden confirmed that it had had no knowledge of Mr. Yusuf's international travels until the media reports had appeared after his de-listing.

Source: Ahmed Ali Yusuf and Swedish authorities.

B. Consolidated List

71. The accuracy of the Consolidated List continues to be the key factor in the effective implementation of the travel ban. Since 30 January 2004, the Committee has added 70 names of individuals belonging to or associated with Al-Qaida and has made 192 changes to earlier entries on the List. It has also de-listed five individuals.[29] Most of the new designations have sufficient identifiers for Member States to include them in their national databases, though some lack details of nationality or a full date or place of birth. Too many earlier entries still lack these and other details.

72. Of the 217 individuals listed as associated with Al-Qaida, information on 44 shows that they have expired passports or travel documents; a further 40 have passports or travel documents with unclear dates of expiration, and five possess valid passports (including two who have obtained new passports during the time they have been listed). Of the 142 individuals listed as Taliban, 15 have passports

[29] See Committee's press releases available at www.un.org/Docs/sc/committees/1267/1267PressEng.htm.

issued prior to the fall of the Taliban regime which were invalidated by the new Government of Afghanistan in 2002.

73. The inclusion on the List of details of the travel or other identity documents held by listed individuals is of great assistance in implementing the travel ban. An individual who wishes to cross a border through an official checkpoint must possess some documentation, whether legal or false. Thus, the Team recommends that the Council encourage all Member States to inform it whenever a listed individual obtains new travel or other national identification documents, or when the State discovers that an illegal document has been acquired, unless to do so would compromise investigations or enforcement actions.[30] The Committee may then add this information to the List (see also para. 27 above).

74. The Team notes that some Member States do not seize false documents when they find them. To address this, the Team also recommends that the Council expand paragraph 9 of resolution 1617 (2005)[31] to urge all Member States to ensure that stolen, lost and fraudulent passports and other travel documents are not only invalidated, but also seized when found. Similarly, in line with the Team's earlier recommendation (see S/2006/750, para. 38, note 51), the Council might encourage States where no such obligation exists, to require their citizens to report immediately the loss or theft of their travel documents.

75. The Team has also noted that while some States update their national databases as soon as any change is made to the List, others must issue special regulations or obtain permission from a national body before doing so. In the worst case, this may allow a listed individual to evade the sanctions until the watch list is revised. The Team suggests that the Council request States to ensure that they are able to reflect any changes to the List in their national databases without delay. This is equally important when the Committee removes an individual from the List.

76. As part of the general effort to make the checklist more effective, the Team suggests that the question which asks if the relevant names have been added to the visa lookout list should also ask if the name has been added to the national watch list or stop list, which are generally more comprehensive. Similarly the question asking whether any visa has been denied could be expanded to ask also if any listed individual had been stopped at a border or detected illegally in the State's territory.

77. Given the lack of identifiers for some names on the List, an individual may be refused entry into or transit through a State because the State cannot be sure that he is not listed, even if the likelihood is remote. The Team has already discovered one such case. In order to minimize such cases, as well as keep track of the proper refusal of entry to listed individuals, the Team recommends that the Council encourage States to report to the Committee whenever the entry into or transit through their territory has been denied to an individual on the basis of his possible inclusion on the List, providing full identifying details. This will help the Committee to develop guidance for States on the effective implementation of the travel ban, as well as to update the List as appropriate (see also para. 27 above).

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[30] S/2006/750, para. 92; S/2005/572, para. 122; and S/2005/83, paras. 49 and 124.

[31] By paragraph 9 of the resolution, the Council urges all Member States to ensure that stolen and lost passports and other travel documents are invalidated as soon as possible, and to share information on those documents with other Member States through the Interpol database.

C. Interpol assistance with the travel ban

78. The relationship between Interpol and the United Nations continues to expand. In August 2006, the Security Council adopted resolution 1699 (2006), and the Interpol General Assembly passed a similar resolution the following month, calling for increased cooperation between Interpol and all United Nations sanctions committees.[32]

79. More Interpol-United Nations Security Council special notices have been published (both within the Interpol restricted global police communications system, I-24/7, and on the Interpol public website, www.interpol.int), and the total had reached 277 by the end of October 2006.[33] Many of the new notices were made possible by the addition of identifiers to the Consolidated List, thus satisfying Interpol's minimum criteria for the publication of a special notice.

80. Over the year that the special notices have existed, Interpol has received increasing feedback and data from States in response, and much of this information, including photographs and fingerprints, has been added to the notices. States have reported to the Team that they find the notices of real value. Denmark, for example, examines all such notices and checks to see if any of the names or aliases has a connection to the country. It also runs the fingerprints contained in the restricted versions of the notices through its police database to check for matches within its own system.[34] The Team recommends that other States follow this practice.

81. The Committee and Interpol are still to decide whether and how to issue special notices for entities, and how Interpol might provide the Committee with additional information for the List. The Security Council has already encouraged Member States to contribute to the Interpol stolen and lost travel documents database (para. 9 of resolution 1617 (2005)), but it could also draw attention to other Interpol initiatives, such as its Fixed Interpol Network Database and Mobile Interpol Network Database (known as FIND and MIND) (see annex II to the present report) and its DNA database (see box 7 below). The Team has already recommended similar cooperation (S/2005/83, para. 141).

Box 7
The Interpol DNA database

DNA can be a useful tool when dealing with Al-Qaida-related terrorists who seek to hide their identity. For example, the deaths in Iraq of Abu Musab al-Zarqawi in June 2006[a] and of Omar al-Farouq in October 2006[b] were confirmed through DNA.

Yet the reluctance of States to share such material may prevent the widespread use of DNA in the international effort to combat terrorism and other forms of violent crime, whether out of privacy or other legal

[32] See Interpol resolution AG-2006-RES-22, located at www.interpol.int/Public/ICPO/General Assembly/AGN75/resolutions/AGN75RES22.asp.

[33] www.interpol.int/Public/NoticesUN/Search/Recent.asp.

[34] Information communicated to the Team during its visit to Denmark, October 2006.

concerns or from the lack of effective and confidential methods of doing so on a multilateral basis. To remedy this, Interpol has begun to establish an international repository of DNA profiles that countries may access under strict conditions to meet civil liberties and privacy concerns.

In July 2006, Interpol began electronic, round-the-clock access to its centralized DNA database for participating countries. Supplying countries maintain control of their own data, including the identities of the persons to whom the DNA refers, in accordance with national laws. In case of a match, Interpol will notify the two countries involved and allow them to decide how to take the matter forward. Interpol is now considering whether to supply basic DNA profile matching software to allow other countries which currently have no national DNA database to participate in the project.

The Interpol DNA database has already yielded results, with 98 potential matches involving 10 countries. Although Interpol does not know if any terrorist incidents have been resolved via the database, it has found connections between a multitude of other violent crimes that occurred thousands of kilometres, and many countries, apart.

The potential of this new technology to unmask terrorists and other perpetrators of violent crime is clear. It is estimated that 70 of the 186 Interpol member States use DNA profiling in police investigations. To date, 42 States have provided DNA data to the Interpol database resulting in more than 61,000 DNA profiles stored there. As the system becomes more established and better known, and amendments to national legislation are made to authorize such data exchange, the number of participating States is expected to increase.

Source: Interpol.

[a] Abu Musab al-Zarqawi, listed as Ahmad Fadil Nazal al-Khalayleh (QI.A.131.03), was primarily identified on the basis of fingerprinting, but DNA testing was used to confirm his identity. See Special Multinational Forces in Iraq, briefing by Major General William Caldwell, spokesman, on autopsy results for Abu Musab al-Zarqawi, available at www.mnf-iraq.com/index.php?option=com_content&task=view&id=2016&Itemid=30.

[b] Mahmoud Ahmed Mohammed al-Rashid (not listed), also known as Omar al-Farouq, was an Al-Qaida fugitive who escaped Bagram high security prison in Afghanistan in July 2005. His death was verified using DNA testing. See "DNA confirms death of Al-Qaeda Bagram fugitive", United States Central Command press release No. 06-01-01P of 10 October 2006, available at www.centcom.mil/sites/uscentcom1/Lists/Press%20Releases/DispForm.aspx?ID=3843&Source=http%3A%2F%2Fwww%2Ecentcom%2Emil%2Fsites%2Fuscentcom1%2FLists%2FPress%2520Releases%2FCurrent%2520Releases%2Easpx.

D. International organizations

82. The Committee has recently begun to increase its cooperation with various international and regional organizations such as Interpol, the International Civil Aviation Organization (ICAO), the Organization for Security and Cooperation in Europe (OSCE) and the International Air Transport Association (IATA). The value of such cooperation is widely recognized and covers all areas of the sanctions

regime. But there is particular value for the travel ban and the Monitoring Team suggests that the Committee remind such organizations of paragraph 19 of resolution 1526 (2004), which reads in part: "[the Security Council requests] that the Committee's list, whenever amended, be automatically conveyed by the Secretariat to all States, regional and subregional organizations for inclusion, to the extent possible, of listed names in their respective electronic databases and relevant border enforcement and entry/exit tracking systems". The Monitoring Team has drawn up a list of international and regional organizations that it believes relevant to the Committee's work so that the Committee may decides its priorities with regard to cooperation.

E. Technical capacity and border control systems

83. The technical capacity of Member States has a significant influence on their ability to implement the sanctions measures. So far as the travel ban is concerned, a comprehensive and technically efficient national database, an online system for checking passenger departures and arrivals, and quick access to sources for verification of an individual's information are tools that should be available ideally at all border points. Many States are improving the quality of their national travel documents and over 110 States presently issue, or plan to issue, machine-readable travel documents which contain the holder's identification details, including a photograph or digital image, with mandatory identity elements reflected in a two-line machine-readable zone (see icao.int/mrtd/overview/overview.cfm). The next step will be the use of biometrics in travel documents, preferably according to a single international standard to ensure global interoperability (see icao.int/mrtd/biometrics/intro.cfm).

84. Unfortunately, many States still fall far short of such technical capacity, and even where machine-readable travel documents are issued, the capacity to check them does not necessarily exist at all border points. The Monitoring Team believes that this problem will increase when biometric travel documents are in wide circulation, as many States will lack the necessary additional equipment to check them. The Team recommends that the Council urge Member States to improve their technical capacity and request them, along with international and regional organizations, to provide assistance to States that lack such capacity, including through the provision of necessary equipment, so as to enable these States to raise the quality of their own travel documents and to develop their ability to benefit from the technical improvements introduced by others. But the Team also recommends that the Council remind States that the value of sophisticated identity and travel documents counts for little if the procedures for acquiring them are lax and if required proofs of identity can be provided by documents which are, in their turn, easily forged or fraudulently obtained.

VII. Arms embargo

85. Since its appointment, the Monitoring Team has reviewed 147 reports submitted by Member States pursuant to resolution 1455 (2003) and 55 checklists submitted under resolution 1617 (2005), and has visited 48 States on its own and a further 13 with the Committee Chairman. This being its last report under resolution

1617 (2005), the Team offers an overall assessment of Member States' implementation of the arms embargo, and comments on problem areas for the Committee's consideration.

86. The Team believes that the implementation of the arms embargo has not been given the same attention by Member States as the two other sanctions measures. The main explanation for this may be that States do not have a good general understanding of the importance of the embargo and of what is expected of them by the Security Council through its implementation. At the same time, much of the information required by the Committee and the Team to assess both the level and effect of implementation goes to the heart of an individual State's security measures and is sensitive information that it may be reluctant to share. Also, terrorism is a problem that many States have faced for some time; most, if not all, already have mechanisms in place to deal with it at a domestic level and do not see any particular need to update these mechanisms to implement the arms embargo specifically to address the threat from Al-Qaida and the Taliban.

A. The arms embargo — an explanation of terms

87. In an effort to explain the demands of the arms embargo, the Monitoring Team has prepared a paper which clarifies its scope, and the Committee has approved its circulation to States. The paper explains that the embargo, as expanded by resolution 1390 (2002), is unique in terms of its scope when compared to other arms embargoes imposed by the Security Council under Chapter VII of the Charter. First, it is the only arms embargo that is applicable to a list of individuals and entities wherever they may be located; and second, it obliges Member States to prevent their nationals, vessels carrying their flag and their national aircraft, wherever they are, from violating its terms. This universal application of the arms embargo seems to have been overlooked by many Member States.

88. There are also no exemptions provided for this sanctions measure since the arms embargo applies only to those individuals and entities designated by the Committee. There are no circumstances under which the supply, sale or transfer of arms or related materiel or technical advice, assistance or training to listed individuals and entities is allowed. For the same reason, no reporting process on the export/import of arms or materiel to listed individuals or entities is necessary. These are some of the issues that the Team believes need to be brought to the attention of Member States and has included in its paper, entitled "Explanation of Terms", in the expectation that, by providing Member States with a clear explanation of their obligations, it may remove obstacles to their implementation caused by any lack of understanding of States' responsibilities.

89. To ensure its wide circulation, the Team recommends that the paper be attached as an annex to the next Security Council resolution dealing with the Al-Qaida/Taliban sanctions regime. At the same time, the Team also recommends that the paper be placed on the Committee's website for easy access by Member States and international and regional organizations that may be able to help States implement the embargo.

B. Acquisition of arms and explosives by listed individuals and entities

90. The Monitoring Team has stated in its previous reports that listed individuals and entities subject to the arms embargo are either using or interested in acquiring small arms and light weapons (for example, firearms, rocket launchers and man-portable air defence systems). The Team also notes that they will use whatever explosives are available in any particular area of operation (for example, military-grade explosives in areas of conflict), or will obtain the necessary components to improvise an explosive device. As an illustration of the latter, the Team has given examples of attacks where terrorists have used ammonium nitrate, a commonly available fertilizer, as an explosives booster.[35]

91. The Team notes from its contact with Member States that despite being placed on the Consolidated List, and therefore subject to the arms embargo, listed individuals and entities are still involved in killings and bombings where and when they have the opportunity. This situation may be exacerbated by the way in which some Member States understand and implement the Al-Qaida/Taliban arms embargo.

92. The majority of Member States assessed by the Team use classic arms regulations to implement the arms embargo, generally relying on legislation that was in place before the establishment of the Al-Qaida/Taliban sanctions regime. The Team believes that the absence of a specific legal framework in a number of States undermines the role, efficiency and objectives of the embargo and makes it easier for individuals and entities on the List to continue to operate as they want. For example, a State may have sufficient regulation to control the sale of weapons, but not specifically to prohibit access to them by listed individuals or entities.

93. The Committee has already agreed (S/2006/635, para. 15) to the Team's recommendation that it should remind Member States that the Al-Qaida/Taliban arms embargo requires specific legislation for its effective implementation (S/2006/154, para. 111). The Team suggests that the Council, in its next relevant resolution, encourage States, if they have not already done so, to introduce specific legislation or administrative measures directly relevant to their implementation of the arms embargo, including preventing listed individuals and entities access to ammonium nitrate-based products with a high nitrogen content.

C. Technical assistance and training

94. The "Explanation of Terms" paper also reminds States that the arms embargo is not limited to arms and related equipment but also aims to prevent listed individuals and entities having access to technical assistance or training. The

[35] In September 2006, approximately 600 kilograms of ammonium nitrate were reportedly confiscated from the Abu Sayyaf Group (QE.A.1.01) by authorities in the Philippines (official information communicated to the Team during its visit to Manila, September 2006). In October 2006, the International Security Assistance Force (ISAF) confiscated approximately 5,100 kilograms of the same substance in Laghman Province, Afghanistan (ISAF press release No. 2006-242, 24 October 2006, available at www2.hq.nato.int/isaf/update/Press_Releases/newsrelease/2006/Release_24Oct06_242.htm.

Monitoring Team believes that Member States have tended to overlook this aspect of the embargo.

95. The Committee has accepted an earlier recommendation by the Team that Member States be encouraged to submit for listing those who conduct, direct or provide technical advice, assistance or training in the name of or for the benefit of listed individuals and entities. The Team has also proposed that individuals receiving such technical advice, assistance or training should also fall within the definition of "associated with" as set out in operative paragraph 2 of resolution 1617 (2005), and as such their names could be submitted for listing. For example, by participating in a camp run by Al-Qaida or an associated listed group, such as Jemaah Islamiyah (QE.J.92.02), the Abu Sayyaf Group (QE.A.1.01) or the Salafist Group for Call and Combat (QE.S.14.01), a trainee will not only have acquired destructive skills, but must be presumed to share the objectives of the group as well as its advocacy of violence, and therefore to constitute a threat which should be addressed.

96. As an example of the danger presented by trainees, the Team has learned that in Indonesia, Azahari Husin (QI.H.113.03), a well-known bomb expert now reported to be dead,[36] trained dozens of people over a period of years (S/2006/154, box 8). Azahari Husin was on the List when he conducted this training and was considered one of the most wanted men in South-East Asia. According to several official sources from more than one State in the region, some of his trainees have received sufficient training to become competent instructors in their own right, but they remain not listed and so unaffected by the sanctions regime.

97. According to authorities in the Philippines, Dulmatin, listed under the name Joko Pitono (QI.P.185.05), and Umar Patek, two leading members of Jemaah Islamiyah, received training in Mindanao with the Abu Sayyaf Group, protected by mid-level leaders of the Moro Islamic Liberation Front (not listed). Umar Patek is not listed, but is suspected of involvement in several bombings in the region, including the 2002 Bali bombing which killed 202 people.

98. The Committee has said that it sees value in clarifying the scope of the arms embargo and that it "encourages Member States to submit for listing the names of those who provide technical advice, assistance or training" (S/2006/635, paras. 14 and 15). In the light of this, the Monitoring Team recommends that the Council clarify what is meant by "technical advice, assistance or training" within the arms embargo. The Team believes that this phrase should cover not only those who conduct, direct or provide technical advice, assistance or training for listed parties, but also those who receive it from listed individuals or groups. If the Council agrees, then Member States should also consider submitting the names of these individuals for addition to the Consolidated List.

99. A further issue is the recruitment of individuals to act as suicide bombers or otherwise help to mount attacks. Recruitment for Al-Qaida or the Taliban or its affiliates is included in resolution 1617 (2005) as sufficient evidence of association to allow listing, but the Team believes that recruitment for terrorist acts could also be seen as akin to supplying technical advice, assistance or training related to military activities and so could be included under the terms of the arms embargo. States would then be obliged to ensure that their citizens, wherever they were, did

[36] See www.state.gov/s/ct/field/c17575.htm.

not take part in such activity. The Team invites the Council or Committee to consider this.

D. Enforcement of the arms embargo

100. As has been stated by the Security Council in resolution 1617 (2005) (seventh preambular paragraph) and repeated by the Committee (S/2005/760, sect. II), listing is a preventive, not a punitive measure. In that context, individuals who are deemed by the Committee to be members of Al-Qaida or the Taliban or their associates should be listed without delay. The Monitoring Team recommends that the Committee encourage Member States explicitly to submit for listing those people, especially if still at large, who they believe have conducted bombings and killings in the name of listed individuals and entities, as by such action they would appear to come under the definition of "associated with" as set out in paragraph 2 of resolution 1617 (2005).

101. The Team also recommends that the Committee remind Member States that are the victims of Al-Qaida-related attacks of the possibility of listing those identified as responsible. The Team can bring such incidents to the Committee's attention if this would be useful.

102. Finally, the Team continues to recommend that the Committee remind Member States of their obligation to ensure that their nationals do not breach the arms embargo and to encourage them to prosecute those nationals who do so. The Team continues to recommend that the Committee also encourage Member States to ensure that they have the necessary domestic legislation in place to take action against such violations (see S/2004/679, paras. 2-5).

VIII. Monitoring Team activities

A. Visits

103. The Team visited five Member States between August and November 2006. A visit to the Philippines in September was made jointly with the Counter-Terrorism Committee Executive Directorate. Terrorism is a high-priority issue in the Philippines, where the authorities are fully supportive of the work of the United Nations. However, the trip highlighted the need to explain more widely the distinction between the mandates of the Counter-Terrorism Committee and the 1267 Committee. Such confusion is widespread and it is completely understandable that national officials may lack understanding of the different implications of resolution 1373 (2001) and of resolution 1267 (1999) and its successors. The Team continues to recommend that the Council find new opportunities to make these distinctions clearer, whether through press releases, official statements or even through its new resolutions (see S/2004/679, para. 83).

104. In October the Team visited Canada, where the national authorities have an excellent understanding of the sanctions regime and have introduced a particularly effective system for distributing the List, also making it available at government expense in Excel format so that financial and other relevant non-government institutions may download it in a fully searchable form. The Team continues to

recommend that the Committee find a way to allow other Member States to access the List in this format through its website (see S/2006/154, para. 71; see also sect. V above on assets freeze, paras. 57 and 58).

105. During the Team's visits to Switzerland, Sweden and Denmark in October, the three countries described sophisticated systems to implement the sanctions, particularly the assets freeze. Switzerland and Sweden have first-hand experience with the listings of their residents, the obligation to freeze their assets and the process of de-listing. The three countries have been vocal in proposing reforms designed to increase the fairness and transparency of the sanctions programme. All three have developed effective procedures to freeze assets, including, for Denmark and Sweden, through the implementation mechanism of the European Union. The countries have similar experiences and challenges with regard to implementing the travel ban within a region that is largely without internal borders, as Denmark and Sweden are members of the Schengen system, and Switzerland is expected to join in the future. All three countries offered examples of best practice in implementing various aspects of the sanctions, and described well-established national databases and sophisticated systems of legislation and regulation.

106. Joint visits with the Counter-Terrorism Committee Executive Directorate are becoming more common and are appreciated by States that may receive proposals for visits from both expert groups. The two Committees have encouraged these joint visits, but recognize that at times a visit by one group may achieve more than a joint visit, or a destination may be important to one group but less so to the other. Given their different mandates, the Counter-Terrorism Committee Executive Directorate and the Monitoring Team will usually have different specific objectives from a visit, but as joint trips become more common, the Team is confident that the natural complementarity of their activities will lead to added value for both groups in excess of the normal benefit of such trips when conducted alone.

B. Regional meetings for intelligence and security services

107. At the request of States in the region, and with the approval of the Committee, the Monitoring Team organized a meeting in August for the heads and deputy heads of intelligence and security services from the Libyan Arab Jamahiriya, Mali, Mauritania, Morocco and Niger to discuss the growing threat from Al-Qaida-related terrorism in the Sahel-Sahara region. The meeting reached a common assessment of the problem, being concerned that the ambitions of the Salafist Group for Call and Combat in particular could cause increasing problems, not just in the sub-Saharan area, but also in the more populated areas of North Africa and into Western Europe. There was concern that as Iraq became less attractive to militants, the Sahel-Sahara region could provide them a place to train and prepare for terrorist operations in their countries of origin or further afield, and that they might find easy targets in North Africa, particularly if there were an influx of foreign troops there.

108. Noting the support of Member States,[37] the Team intends to expand its network of regional meetings and is setting up a group in South-East Asia. The Team recommends that the Committee, which has warmly welcomed this

[37] As expressed, for example, at the 5538th meeting of the Security Council on 28 September 2006. (see S/PV.5538).

engagement by States, find an opportunity to make explicit its support for such meetings.

C. International and regional organizations

109. The Monitoring Team also attended various international conferences and meetings organized by bodies such as OSCE, the Council of Europe, Interpol, the European Union presidency, the Government of the United States, the International Monetary Fund, and the Counter-Terrorism Action Group of the Group of Eight. The Team's coordinator also attended meetings of the United Nations Counter-Terrorism Implementation Task Force.

110. These meetings confirmed the Team's view that cooperation with international and regional organizations and participation in meetings convened by them produce an immediate, direct benefit for States' understanding of the sanctions measures and their ability to implement them, while providing useful information for the Committee. International and regional organizations can themselves play a useful role in helping States to fulfil their obligations under Security Council resolutions, as well as play a greater role in the international fight against terrorism. The Team recommends that the Committee continue to promote its close cooperation with international and regional groups, encourage a greater flow and exchange of information among their members and with the rest of the international community, and encourage through them an integrated approach to counter-terrorism that includes the private sector and civil society.

111. The Team has submitted several proposals to the Committee for cooperation with international and regional organizations. The Committee must now decide whether it endorses the approach and, if so, which organizations to engage and how. Of the more than 40 organizations identified by the Team as potential partners, the Committee has already agreed explicitly to cooperate formally with several, such as ICAO, IATA, the International Atomic Energy Agency, OSCE and Interpol. However, the Team sees immediate benefit from a broader engagement in terms of spreading knowledge of the Committee's work and of the Consolidated List, especially to officials who have to implement the sanctions measures on the ground. Such engagement will also help to identify and spread best practice and to identify gaps in implementation and capacity needs for discussion with the Counter-Terrorism Committee Executive Directorate.

112. The Team recommends that the Committee invite selected international and regional organizations to appear before it, or replicate the Chairman's successful address to OSCE in October 2005 (see S/PV.5293 and Corr.1) as a way to deepen the exchange.

D. Cooperation with the Counter-Terrorism Committee and the Committee established pursuant to resolution 1540 (2004)

113. In addition to coordinating its travel plans with the Counter-Terrorism Committee Executive Directorate, the Monitoring Team has discussed common issues, both with the Executive Directorate and the experts who support the 1540 Committee. This led the Team to draft a common approach to deal with the

reporting requirements placed on States by the three Committees, which, after discussion with the other two groups, was submitted to and welcomed by all three Committees (see S/PV.5538). The expert groups are now working together to implement the agreed approach. The Team has also continued to exchange information with the Executive Directorate, in particular prior to trips by either group to Member States.

E. Database

114. The Team's database is in operation and has proved a valuable tool for everyday use; it was of particular help in providing statistics used by the Team in assessing Member States' implementation of the measures in response to a request from the Committee pursuant to paragraph 17 of resolution 1617 (2005). The database is also available to the Counter-Terrorism Committee Executive Directorate, the experts who support the 1540 Committee and the Secretariat.

F. Committee's website

1. Guidance for searching the Consolidated List

115. In October, the Committee approved proposals from the Monitoring Team to help Member States conduct effective searches of the List. These will appear on the Committee's website in all official languages.

2. Information package

116. The Team has submitted other proposals to improve the Committee's website, including a fact sheet on the Committee's work and mandate, which is now on the website under "General information on the work of the Committee".[38] The Team recommends that the Committee approve an information package containing the "General information" paper; the latest resolution on the Al-Qaida/Taliban sanctions regime; a list of key Committee documents; and other papers that might assist States' understanding of the Committee's work and of their obligations to implement the measures. This information package could be transmitted to Member States as appropriate, for example during visits by the Chairman or the Team, as well as to international and regional organizations. The Team has already submitted to the Committee a list of papers that it believes States would find useful.

3. Other improvements to the Committee's website

117. The Team has worked with the Secretariat, in particular the Department of Public Information, to improve access to the Committee's website from the United Nations homepage and to make it more user-friendly. The Team continues to develop other proposals, while bearing in mind the need for consistency with other sanctions committees' websites.

[38] www.un.org/Docs/sc/committees/General.Information.pdf.

Annex I

Litigation by or relating to individuals on the Consolidated List

1. Over the past several months, the Monitoring Team has learned of at least seven additional legal challenges to aspects of the sanctions programme, all filed in Europe, as well as a court judgment in Turkey to unfreeze the assets of a listed person. These cases are among the 25 known legal challenges to the sanctions, or the administration of them, filed on behalf of persons and entities listed by the Committee.[a] The following is a summary of the relevant legal proceedings, as updated from previous reports (S/2006/750, annex III; S/2006/154, annex; S/2005/572, annex II; and S/2005/83, annex II).[b]

A. European Union

2. In recent months, parties listed pursuant to the Al-Qaida and Taliban sanctions have filed four new cases before the European Court of First Instance challenging the programme. This raises the total number of such cases before the Court of First Instance and the Court of Justice to nine.

3. The four new cases, filed in May 2006, were brought on behalf of three listed individuals and one listed entity, all based in Birmingham or Manchester, United Kingdom: Abd al-Rahman al-Faqih (QI.A.212.06);[c] Ghuma Abd'Rabbah (QI.A.211.06);[d] Tahir Nasuf (QI.N.215.06);[e] and Sanabel Relief Agency Limited (QE.S.124.06)[f]. All seek the annulment of the regulations of the European Commission and the Council of the European Union which implement the Security Council sanctions on Al-Qaida and the Taliban. The Council lodged its statement of defence in each of the cases in October 2006.

4. With respect to the five cases filed previously, the Court of First Instance handed down decisions in two of them in September 2005 and in two others in July 2006, dismissing the applicants' claims and upholding the sanctions. All four have been appealed to the Court of Justice, although the applicants in the latter two cases have been granted a stay (which the Council of the European Union had not opposed), pending a decision in the earlier two cases. In the earlier two cases, the written procedure before the Court of Justice is in its final stage, although no

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[a] There have been nine challenges to listings made pursuant to the Al-Qaida/Taliban sanctions before the Court of First Instance of the European Court of Justice, seven cases in the United States, three in the United Kingdom, two in both Pakistan and Turkey and one per country in Belgium and Italy. Most of these cases have been described in the Team's previous reports (S/2006/750, annex III; S/2006/154, annex; S/2005/572, annex II; S/2005/83, annex II). The other cases described in the Team's reports involved related actions involving listed persons, such as decisions regarding criminal investigations or forfeiture proceedings, or actions for compensation for prosecutorial investigations.

[b] Information provided by Member States and regional organizations.

[c] Filed under case T-135/06, Al-Bashir al-Faqih v. Council.

[d] Filed under case T-137/06, Ghunia Abdrabbah v. Council.

[e] Filed under case T-138/06, Taher Nasuf v. Council.

[f] Filed under case T-136/06, Sanabel Agency Ltd v. Council.

hearing date has been set. The final case of the five initial challenges before the Court of First Instance remains pending.

B. Pakistan

5. The two lawsuits filed in Pakistan by listed entities, as described in the Team's fifth report (S/2006/750), are ongoing. In one case, a lower court in Pakistan had ruled in favour of Al-Rashid Trust (QE.A.5.01), based on the Government's failure to issue a statutory notification to the Trust, and the case is now on appeal to the Supreme Court. In the other case, Al-Akhtar Trust International (QE.A.121.05) is challenging the freezing of its assets, and the case is pending in the High Court of Sindh.

C. Switzerland

6. As the Team noted in its fifth report, listed individual Youssef Nada Ebada (QI.E.53.01) filed a complaint in June 2006 against the Office of the Attorney General of Switzerland, seeking compensation for financial losses resulting from a now-closed investigation by the federal prosecutor involving him and his company, Nada Management Organization SA (QE.N.58.01). The case is pending before the Federal Criminal Tribunal in Bellinzona.

7. A separate challenge is continuing after the administrative authority of the second instance rejected in June 2006 the appeals by Nada and by Ali Ghaleb Himmat (QI.H.43.01) to delete them and associated entities from the domestic Al-Qaida and Taliban sanctions list. As the Team previously noted, the Federal Department of Economic Affairs argued that Switzerland was bound by the decisions of the Security Council and could not act on its own authority. The Department called Nada and Himmat's attention to the 1267 Committee's de-listing procedures, and pointed out that the Government of Switzerland lacked the competence to commence a de-listing procedure because they were neither citizens nor residents of Switzerland. Both cases have been appealed and are now pending before the Federal Council.

D. Turkey

8. In previous reports, the Team described two legal challenges filed in Turkey by listed persons: one by Yasin al-Qadi (QI.A.22.01) and the other by Nasco Nasreddin Holding A.S. (QE.N.81.02). In the Al-Qadi case, the 10th Division of the Council of State, which examined the case as a court of first instance, issued a judgment on 4 July 2006, cancelling the relevant sections of the Cabinet Decision of 22 December 2001 that had frozen Al-Qadi's assets in Turkey. The 10th Division of the Council of State based its decision on the fact that the information and documents of the Security Council, which alleged that Al-Qadi was associated with Al-Qaida, should have been (but were not) presented to the judiciary in Turkey to enable an evaluation of the materials. The decision also stated that a freeze on one's assets should be initiated only by a court's decision instead of as an administrative one. The Plenary Session of the Administrative Law Divisions of the Council of State (composed of the Presidents and three members

of each Administrative Law Division and presided over by the President or one of the Vice-Presidents of the Council of State) suspended the implementation of the 10th Division's decision on 12 October 2006. Thus, the freeze on Al-Qadi's assets will continue in force during the appeal proceedings. The case involving Nasco Nasreddin Holding A.S. remains pending.

E. United Kingdom

9. The United Kingdom of Great Britain and Northern Ireland has three pending cases relating to individuals on the Consolidated List. In each of the cases, the Government suspended payments of benefits to households of listed persons pending the grant of a licence, and thereafter resumed payment of benefits, subject to a licence with conditions regarding the use of the money. The spouses of the three listed persons, to whom the benefits are paid, challenged whether the benefits could be restricted and subject to a licence with conditions, as the money was not paid to the listed persons. The High Court denied the spouses' claims, holding that the benefits should be restricted. The cases are being appealed.

F. United States of America

10. Of the four pending cases filed in the United States of America by individuals and entities on the Consolidated List and described in the Team's fifth report, one has been dismissed after a settlement between the parties. In July 2006, a federal district court dismissed the lawsuit filed by Al-Haramain Islamic Foundation (QE.A.117.04) after the United States agreed to license the return of thousands of volumes of religious literature (including copies of the Koran) to counsel for Al-Haramain, which allowed for further distribution of the material. United States authorities had removed the material from the offices of Al-Haramain at the time of its listing in 2004.

11. In a second case involving Al-Haramain, a federal district court in September 2006 denied a Government motion to dismiss the case, based on the state secrets privilege, and the United States has sought leave to appeal that decision immediately to a federal court of appeals, rather than waiting for a decision on the entire case. The Ninth Circuit Court of Appeals is considering whether to allow the Government appeal.

12. The third case related to Al-Haramain, filed by its former chairman, Aqeel Al-Aqil (QI.A.171.04), is ongoing. The Government moved to dismiss the case, and Al-Aqil filed a written response. A decision remains pending.

13. A decision also is awaited in a case filed in 2002 by Global Relief Foundation (QE.G.91.02), which challenged its designation by the United States in 2002. A federal district court dismissed many of Global Relief's claims in 2002, and an appeals court affirmed the dismissal, but a motion for summary judgment on the other counts remains pending.

Annex II

The Fixed Interpol Network Database and Mobile Interpol Network Database[a]

1. The increasing sophistication and proliferation of fraudulent and stolen travel documents have rendered it much more difficult for law enforcement and border control officers to track terrorists and other violent criminals. The Security Council has promoted international efforts to curb such illicit travel, including through Interpol's stolen and lost travel documents database, highlighted in both preambular and operative paragraphs of resolution 1617 (2005). But such false or stolen documents frequently are difficult to detect, and access to computerized databases may be non-existent, particularly for law enforcement or border control officers working outside an office or in remote areas. Now, however, Interpol may have a solution to these problems in the form of its fixed and mobile network database projects (known as FIND and MIND).

2. The Fixed Interpol Network Database connects a country's national law enforcement computer servers to the Interpol global police communications system, I-24/7, and allows direct access to the Interpol central system in Lyon for all of the country's connected law enforcement officers. As the Monitoring Team described in its fifth report (S/2005/750, box 4), Interpol launched the system in December 2005 in Switzerland, allowing instant access to its stolen and lost travel documents database for 20,000 law enforcement officers in the field. Since that time, Swiss authorities have been conducting over 400,000 database searches per month.

3. As the Secretary General of Interpol recently noted, using the Fixed Interpol Network Database system, "the Swiss get results. Each month they generate over 100 hits [people found in possession of travel documents that have been reported stolen or lost]. When Switzerland started using this system, it began performing far more passports searches through the [stolen and lost travel documents] database than all other member countries combined — 60 times as many." France began using the same system in August 2006 at Charles de Gaulle airport in Paris, and now conducts 80,000 database searches every month.[b] South Africa is also preparing to begin operating the Fixed Interpol Network Database system.

4. As useful as this technology may be for police with access to a computer and the Internet, a high proportion of persons attempting to travel with counterfeit documents may encounter officers who operate in less developed regions or away from their desks. For these officers, the Mobile Interpol Network Database may be more valuable. The database allows officers to utilize a small, hand-held device which contains the same data as in the Interpol central database in Lyon and thus may be used in any part of any country. This system will enable all types of police and border officers, including those without sophisticated (or any) infrastructure, to perform checks of all travellers or other suspicious persons by checking data from travel documents or other sources. In August 2006, Interpol began pilot projects of the Mobile Interpol Network Database in Croatia, Saudi Arabia, Singapore, Saint Lucia and the United States of America, and hopes to expand the project to other

[a] Interpol officials provided the information for this annex.

[b] See statement of Ronald K. Noble, 19 September 2006, at www.interpol.int/Public/ICPO/speeches/SG75thGA20060919.asp#.

regions over the next year, including, for example, for use at the cricket world cup in the Caribbean in 2007. Such technology is expected to assist law enforcement in combating terrorism and other serious crime because, as the Secretary General of Interpol remarked, "As more authorized law enforcement officers gain instant access to Interpol databases, more international criminals will be apprehended at borders, airports and other field locations." [b]

5. The costs of implementation of the fixed and mobile network databases in all Interpol member countries (currently 186) are significant. Many countries cannot afford to pay their share of the cost, nor can the Interpol General Secretariat in Lyon. Interpol, therefore, is looking for external funding to assist with the implementation of the project.